BEFORE THE ENVIRONMENTAL APPEALS BOARD UNITED STATES ENVIRONMENTAL PROTECTION AGENCY WASHINGTON, D.C.

	- ,
In re:)
Thomas Kelly and Jonathan Prisk)) CWA Appeal No. 98-(8)
Docket No. CWA-AO-028-94)))

ORDER DECLINING TO SUSPEND IMPLEMENTATION OF THE DECISION AND ORDER OF THE REGIONAL ADMINISTRATOR

On August 10, 1998, the Decision and Order of the Regional Administrator (the "Order") in the above-captioned matter was served on counsel for the respondents Thomas Kelly and Jonathan Prisk. Pursuant to the terms of the Order, the Environmental Appeals Board as the Administrator's delegate may on or before September 15, 1998, suspend implementation of the Order. See Order at 19 (referring to Section 28.29 of the proposed Non-APA Consolidated Rules of Practice for Administrative Assessment of Civil Penalties, 56 Fed. Reg. 29.997 (July 1, 1991), which serve as guidance in this matter). The Board hereby declines to suspend implementation of the Order. Although the Respondents argued at the hearing and in their post-hearing brief that the 1987 version of the Wetlands Delineation Manual is the applicable quidance manual for determining whether the site at issue in this

case is a wetland, the Board will not undertake to review the contrary determination made in the Order at page 8 that the 1989 version of the Wetlands Delineation Manual would be used as the applicable guidance manual in this case, as any alleged error in this determination is harmless given that the record contains uncontroverted testimony that the site is a wetland under the guidance of both the 1987 and 1989 versions of the Wetlands Delineation Manual. See Tr. At 127-129.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: /s/
Ronald L. McCallum,
Environmental Appeals Judge

Dated: 9/11/98

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing ORDER DECLINING TO SUSPEND IMPLEMENTATION OF THE DECISION AND ORDER OF THE REGIONAL ADMINISTRATOR, in the matter of Thomas Kelly and Jonathan Prisk, CWA Appeal No. 98-(8), were sent to the following persons in the manner indicated:

Pouch Mail:

Regina Kossek, Presiding Officer U.S. EPA, region 5 77 West Jackson Boulevard Chicago, IL 60604

Jane Woolums, U.S. EPA, Region 5 Office of Regional Counsel 77 West Jackson Boulevard

Chicago, IL 60604

Certified Mail,

Return Receipt Requested:

Timothy P. Dwyer 50 Virginia Road

Crystal Lake, IL 60014

U.S. First Class Mail

Richard A. Persson Exec. Vice President

B & J Manufacturing Company

P.O. Box 325

Glenwood, IL 60425

<u>Personal</u>

Kathleen and Patrick Wygans

2802 Rutledge

Janesville, WI 53545

Dated: 9/11/98 _____/s/

Annette Duncan Secretary